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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 639

MATSON NAVIGATION COMPANY, a corporation,
Petitioner,

vs.

HENRY C. LAWLER,
Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

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MATSON NAVIGATION COMPANY, a corporation,
Petitioner,

vs.

HENRY C. LAWLER,
Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Matson Navigation Company prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit in *Matson Navigation Company,* a corporation, Appellant, vs. *Henry C. Lawler,* Appellee, No. 13743.

OPINIONS BELOW

The opinion of the Court of Appeals (R. 52) is reported in 217 F.2d 645. The opinion of the District Court (R. 11) is reported in 108 F. Supp. 946. Both opinions are printed in an appendix.

JURISDICTION

The judgment was made and entered December 8, 1954. The jurisdiction of this Court is invoked under 28 U.S.C., Sec. 1254(1).

QUESTION PRESENTED

Is a seaman entitled to maintenance if injured in the course of personal relaxation at his own home,—i.e., where the injury occurs onshore, off duty, at his own home—merely because an employer - employee relation with the shipowner exists at the time?

STATEMENT OF THE CASE

This was a seaman's suit in admiralty, under the maritime law, for maintenance* (R. 3). The District Court had jurisdiction under 28 U.S.C., Sec. 1333(1).

The seaman, Lawler, was injured in an automobile accident while driving his own automobile from his own home in San Francisco to a nearby city on a personal pleasure trip (R. 12, 16).

Lawler was a waiter on petitioner's ship, the SS LURLINE, the home port of which was also San Francisco. The ship arrived in San Francisco, and he was paid off and released from all obligations under the articles for the voyage just concluded, about 9:30 A.M. on May 11, 1952 (R. 15). He left the vessel, went to his home, then went on the automobile trip, and suffered his accident about 12:30 P.M.

Before arrival in San Francisco he had signed articles for the succeeding voyage. Pay began under the new articles at 12 Noon on May 11th. But, under established practice, he was not required to report for duty until the

*He had received his "cure" without cost at a U. S. Public Health Service Hospital.

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next day. As found, "libellant was not required to report for work under such articles until 9:30 A.M. on May 12, 1952" (R. 15). When he left the ship at 10 A.M., he did not advise anyone where he would be or could be reached (R. 42). It was, in his words, his "time off to do what or go where" he pleased (R. 43). The ship could not have called him for duty before 9:30 A.M. the next day because he could not have been found.

The Judgment and its Basis

The District Court awarded Lawler 68 days maintenance, totalling $544.00 (R. 16) on the basis that he was "a member of the crew" and "generally answerable to the call of duty at the time he was injured" (App. p. 4). The Court of Appeals affirmed in a brief opinion stating no more than that it believed the judgment to be in accord with "the current trend of authority" and that "we are in agreement with the trend" (App. p. 4). The reference to a trend is, of course, tantamount to a statement that no decision had yet gone so far.

REASONS FOR GRANTING THE WRIT

The question is an important one of federal maritime law which has not been, but should be, settled by this Court. The decision below applies a rule that this Court was expressly asked to establish in *Aguilar v. Standard Oil Co.*, 318 U.S. 724, but deliberately refrained from approving. Moreover, the judgment is in conflict with the carefully stated rationale of this Court's decision in the *Aguilar* and later cases.

The Decision is an Unwarranted Expansion of the Right to Maintenance, Contrary to the Rationale of This Court's Decisions in the Aguilar, Warren and Farrell Cases.

The doctrine of maintenance and cure is an ancient part of maritime law. That law denied seamen any right to damages for negligence but it declared that a seaman injured "in the service of the ship" is entitled to medical treatment and support while recovering, without regard to fault of the ship. *The Osceola,* 189 U.S. 158. The right to maintenance for injuries sustained on shipboard, whatever the activity at the time, has long been recognized. So also was the right where injuries were sustained in performance of some activity on behalf of the ship, whether occurring on ship or ashore. But, prior to the *Aguilar* case, it was generally supposed that the right did not exist if the seaman was injured "off-duty, ashore." Cf. 1 *Benedict on Admiralty* (6th ed.) Sec. 83, p. 254, and citations.

In the *Aguilar* case this Court held a seaman entitled to maintenance for "injuries incurred on the dock or other premises which must be traversed in going from the vessel to the public streets or returning to it from them" while on shore leave in a foreign port.

The respective positions of the seaman and the shipowner in that case were sharply stated. The shipowner contended that if a seaman is injured ashore, he may have maintenance only if "on duty" at the time. The claimant went to the other extreme. He contended that the key term, "in the service of the ship," "includes the whole period of service covered by the seaman's articles; and, if he is injured *during this time,* the right is made out" (pp. 726, 272).

This Court rejected the shipowner's contention, *but it did not adopt the claimant's.* It analyzed the considerations warranting maintenance, held that they "applied to the

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facts presented by these cases"* (p. 733) and added, "How far it [liability] extends beyond that we need not now determine." (p. 737)

Later, in *Warren v. United States,* 340 U.S. 523 (3 justices dissenting), the right to maintenance was extended to a seaman injured in a dance hall while on shore leave in a foreign port, on the ground that "This reasoning [of the *Aguilar* decision] is as applicable to injuries received during the period of relaxation while on shore as it is to those received while reaching it." (340 U.S. at 530)

The reasoning of the *Aguilar* case is, then, its heart. It was this:

1. There should not be "cast upon the seaman hazards encountered only by reason of the voyage" (318 U.S. at 733).

2. "Because of the voyage, the shipowner's business," the seaman's need for relaxation must be "satisfied in distant and unfamiliar ports." When a seaman is injured in "those surroundings," i.e., a port away from home, "it is the ship's business which subjects the seaman to the risks attending hours of relaxation in strange surroundings," for it was the ship that "separated him from his usual places of association" (p. 734).

3. "It was from considerations of exactly this character that the liability for maintenance and cure arose" (p. 734).

The *Aguilar* and *Warren* cases have been followed by a considerable number of decisions in lower courts awarding maintenance for injuries sustained ashore in foreign ports.† However, 3 reported cases, other than the instant cause,

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**Waterman SS Co. v. Jones* involved the same facts and was decided with *Aguilar.*

†See, for example: *Korstenen v. American Export Lines,* 1948 A.M.C. (N.Y. City Court); *Grovel v. Stockard SS Co.,* 176 F.2d 121 (3 Cir.); *Ellis v. American-Hawaiian SS Co.,* 165 F.2d 999 (9 Cir.). By "foreign port" is meant, of course, any port away from home.

have arisen involving injuries ashore in the seaman's home port, in which the courts have used the *Aguilar* and *Warren* decisions as a point of departure for an inexcusable extension of the right to maintenance. In *Hunt v. Trawler Brighton, Inc.*, 102 F. Supp. 300 (D.C. Mass.), the seaman, while ashore in the home port between voyages on a fishing vessel, spent the night at his lodging house and was injured on his way to a restaurant. In *Smith v. United States*, 167 F.2d 550 (4 Cir.), the injury occurred in the home port on shore leave but after the seaman had reported for duty for a foreign voyage. And in *Keefe v. American Pacific Steamship Co.*, 110 F. Supp. 853 (S.D. Cal.), the court awarded maintenance for an injury ashore, off duty, at the home port, but did so with repeated emphasis on the fact that the seaman had already entered on his duties under the articles before going ashore.

These are the cases that constitute the "trend" referred to and approved by the Court of Appeals below,* and its decision carries the "trend" further. It rests on the assumption that a seaman is entitled to maintenance for any injury, anywhere, if only the employment relation exists at the time. The shipowner is thus compelled to give an accident and health insurance policy to its seamen employees. This is precisely the contention of the claimant in the *Aguilar* case which this Court refrained from approving.

The question thus presented is whether the right to maintenance is to be extended to a seaman injured while satisfying the need for relaxation at his own home, i.e., at a time and in circumstances to which no consideration of the character stated in *Aguilar* can possibly apply. In *Farrell*

**Siclana v. U. S.*, 56 F. Supp. 442 (D.C. N.Y.) holds the other way, as, apparently, does a poorly reported decision of an inferior court in New York, *Taylor v. United Fruit Co.*, 71 N.Y. Supp. 22.

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v. United States, 336 U.S. 511, where the seaman was injured in a foreign port while returning to the vessel, the teaching of the *Aguilar* case as to foundation of the doctrine of maintenance was succinctly stated (pp. 515, 516):

> "In *Aguilar v. Standard Oil Co.,* 318 U.S. 724, the Court pointed out that logically and historically the duty of maintenance and cure derives from a seaman's dependence on his ship * * *"

A seaman ashore, off duty, seeking relaxation *at his own home,* is not dependent on his ship. He is no more dependent on his ship than is a factory worker at home dependent on his place of employment. He is not there subject to hazards encountered by reason of a voyage or under the need to seek relaxation in unfamiliar ports, or under risks attending such relaxation in strange surroundings. To say that such a person at such a time is "in the service of the ship" distorts words, subverts history, and defies the rationale of this Court's decisions. Lawler's hazard of injury in an automobile accident was the same as if he had been a waiter in a San Francisco restaurant rather than a waiter on the LURLINE.

The Question Is Important

The question is certainly important. Litigation concerning maintenance and cure constantly flows into the courts. The present decision, if allowed to stand, will inspire a further torrent. Although the doctrine of maintenance and cure is ancient, here is a new extension—wholly apart from legislation. Hence the legal importance.

The practical importance is similarly great. If the decision represents the law, then maintenance may be collected from the shipowner every time a seaman slips in his own bathtub, drops a chair on his foot while moving his furni-

ture, dislocates a finger while playing ball with his children, injures himself while jacking up his automobile in his own backyard to change a tire. No more is necessary than that he be an employee of a ship at the time. Not even signature to articles is necessary, for articles are merely a mode of evidencing the employer-employee relationship,* and there are many cases where maintenance has been awarded employees injured on tugs, barges and ferry boats. These harbor vessels number in the hundreds if not thousands. Under the decision below any employee on these vessels injured at home, to which he returns each night, may have his maintenance.

So again, in the case of seagoing ships, if a voyage is completed but the seaman has agreed to go on another and is then injured at home, the shipowner must pay maintenance. On vessels which tramp the seas for months before returning home, as in olden times, the new liability would not be proportionately large. But for present-day passenger vessels, which carry crews of 300 to 600 men and spend time in the home port every two or three weeks, the new rule imposes a significant burden. It is fair to say that the new liability is fantastic in its magnitude.

The Expansion of the Doctrine of Maintenance Is Unwarranted

In its denial of damages despite negligence and its award of maintenance, cure and wages even in the absence of the shipowner's fault, the maritime law applied a form of workmen's compensation. By statute Congress has given seamen the additional right of damages for negligence (Jones Act, 41 Stat. 1007, 46 U.S.C., Sec. 688). Thus the seaman has been singled out to receive the advantages of two dif-

*Thus in *Hunt v. Trawler Brighton, Inc.*, 102 F. Supp. 300 (D.C. Mass.), the court noted that articles are not pertinent. To the same effect, *Sullivan v. United States*, 73 F. Supp. 525 (S.D. N.Y.).

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ferent systems and the disadvantages of neither. The present decision gives him an additional right as well, the right to an accident and illness insurance policy covering injuries not related to his employment.

And here lies a paradox: The doctrine of maintenance and care was the product of certain social and economic conditions; those conditions have become more and more obliterated by modern ships, modern working conditions, high wages and a variety of other benefits that are the envy of other workers. Yet, while the conditions that gave birth to the doctrine are largely if not entirely vanished, the doctrine is being enlarged by judicial decisions, which rest on a conception of the seaman's economic condition taken from another age and perpetuated by romantic notions.*

Improvement in the economic circumstances of seamen in the last twenty years and particularly during and since World War II has been phenomenal. On the basis of earnings and so-called fringe benefits, there is no large group of workers in the world who can compare with them. For example, from 1943 to 1953, average monthly earnings of licensed seamen under Pacific Coast maritime contracts rose from $295.72 to $863.62, while earnings of unlicensed seamen rose from $163.20 to $523.64, or some 320%. In the same period earnings of manufacturing workers in the United States went from $194.78 to $309.74. Iron and steel workers and automobile workers, considered the pattern-setters in collective bargaining, made gains, respectively, from $215.19 to $329.72 and $250.29 to $380.38, i.e., 170% or less. Additionally, seamen working under Pacific Coast contracts receive welfare benefits, vacations and pension plans equalling or exceeding any in the country for large

*Cf. "Wards of the Admiralty—an Anachronism?", 16 *George Washington Law Review*, p. 523 et seq.

groups of workers. And all this is in addition to board and room while on board ship.

So also the days of virtual servitude of seamen are long gone. Shipping has become thoroughly unionized during the past two decades. Rather than being dependent upon shipowners, seamen now have collective economic power of immeasurable strength, and have imposed costs on the operation of ships so staggering as to contribute to the decline of the number of ships in the Pacific Coast domestic trade from 919 in 1946 to 150 now.

In *Boudoin v. Lykes Bros. Steamship Co., Inc.*, No. 406, this term, in which certiorari was granted on October 15, 1954 and argument heard on February 11, 1955, a brief of The American Merchant Marine Institute, as amicus curiae, was filed about January 24, 1955, in which the changed social and economic circumstances of American seamen have been depicted at considerable length. That picture is fully applicable here.

In *Calmar S.S. Corp. v. Taylor*, 303 U.S. 525, 528, the Court said:

> "The reasons underlying the rule [of maintenance and cure] to which reference must be made in defining it, are those enumerated in the classic passage by Mr. Justice Story in *Harden v. Gordon*, Fed. Cas. No. 6047 (C.C.): the protection of seamen, who, as a class, are poor, friendless and improvident, from the hazards of illness and abandonment while ill in foreign ports; the inducement to masters and owners to protect the safety and health of seamen while in service; the maintenance of a merchant marine for the commercial service and maritime defense of the nation by inducing men to accept employment in an arduous and perilous service."

The extent of the rule is here said to be defined by the reasons underlying it, and three reasons are given. The first

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is that seamen are "poor, friendless and improvident" and therefore must be protected from illness in foreign ports. This reason never did call for maintenance for an injury incurred at home, and to say that seamen today are a poor, improvident, homeless and friendless group is to substitute the past for the present. The second reason is the inducement to shipowners to protect the safety of seamen while in service. But the shipowner has nothing to say about a seamen's use of his spare time at home; to intrude would be sheer presumption quickly rebuffed by the seaman and his union. The third is the maintenance of a merchant marine, an end hardly served by placing new burdens on the staggering back of a dwindling industry.

Cessante ratione, cessat et ipsa lex is an elementary maxim. While petitioner does not ask the Court to undo an old doctrine because of changed conditions, it does submit that an old doctrine should not be expanded when the conditions that created it have largely if not entirely disappeared.*

At the very time that the description in *Harden v. Gordon* still fitted the facts, the courts never gave maintenance for injuries *ashore, off duty, at home.* Mr. Justice Story's decision in *Reed v. Canfield,* Fed. Cas. No. 11641, has been cited to support maintenance for injuries received in the home port. But he there explicitly approved the following statement of the law:

> "'By the ancient marine ordinance, if a mariner falls sick during a voyage, or is hurt in the performance of his duty, he is to be cured at the expense of the ship;

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*This Court has recognized, as in *Farrell v. United States,* 336 U.S. 511, 514, that some conditions have vastly changed:

> "We need not elaborate upon the meanings or weight to be given to the [se] medieval pronouncements of maritime law. As they show, they were written when pirates were not operatic characters but were real-life perils of the sea."

but not, if he receives an injury in the pursuit of his own private concerns.'" (Emphasis supplied.) (p. 428, first col.).

And he went no further than to award maintenance for an accident incurred while the seaman was actually in the performance of service, a fact his opinion emphasizes.* *Reed v. Canfield* holds that injuries incurred in the performance of duties, wherever occurring, call for maintenance, but that injuries incurred in the pursuit of the seamen's private concerns do not. A principle that a seaman is entitled to maintenance for an injury incurred ashore, off duty, at home can only be engendered by wedding a principle Mr. Justice Story rejected to one he accepted. The progeny is illegitimate, and Mr. Justice Story cannot be cited as its grandfather.

CONCLUSION

We respectfully submit that the petition should be granted and the judgment reversed.

Dated: San Francisco, California,
March 3, 1955.

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" * * the accident occurred, while the libellant and the others of the boat crew were actually in the ship's service" (20 Fed. Cas. at p. 430, 2nd col.).

(Appendix follows)

APPENDIX

In the United States District Court
Northern Division California, Southern District
December 18, 1952

No. 26127

Henry C. Lawler,
Libelant,

vs.

Matson Navigation Company,
a corporation
Respondent.

OPINION

ROCHE, Chief Judge.

This is an action for maintenance and cure. There is no question that libelant suffered injuries that incapacitated him for a period of time. The only issue before the court is whether, at the time he was so injured, libelant was in the service of the ship. The facts disclosed by the record, which included no testimony except libelant's deposition are as follows.

Libelant was employed as a waiter on respondent's vessel, the S. S. Lurline, under articles that terminated at San Francisco, California, on May 11, 1952. On May 9th, while still at sea, libelant signed new articles for a round-trip voyage from San Francisco to Honolulu. This voyage was subsequently cancelled because of a strike but libelant's rights, if any, were not thereby affected. It was libelant's testimony that it was customary on the coastwise vessels to sign articles at sea for the ensuing voyage; that in the

instant case the articles in effect on May 9th terminated at noon on May 11th and the new articles became effective immediately; that some members of the stewards department had to work on the 11th but, by custom, the members whose home port was San Francisco did not; that they were free to go ashore; and that they all had to be on board for fire and boat drill on the morning of the 12th. The Lurline docked around nine o'clock on the morning of May 11th and by ten o'clock the libelant was ashore. He was injured in an automobile accident while driving from his home to Calistoga between eleven o'clock and noon.

[1, 2] The duty of the shipowner to furnish maintenance and cure exists in the seaman's home port as well as in a foreign port if he is in the service of the ship at the time he falls ill or is injured and his injury is not due to his wilful act, default or misbehaviour. This was clearly stated by Mr. Justice Story a hundred and twenty years ago in Reed v. Canfield, C.C., Fed. Case No. 11, 641. Subsequent decisions have given the term "in the service of the ship" an even broader construction. In 1948 the Court of Appeals for the Fourth Circuit allowed maintenance and cure to a seaman injured while leaving the home of a friend in his home port. Smith v. United States, 4 Cir., 167 F.2d 550. The seaman had requested shore leave for the purpose of going to his home to obtain some belongings to take with him on the voyage. After leaving his home he went to that of a friend where he spent the night. He suffered his injury the next morning. The district court had denied relief on the ground that the libelant's visit to his friend bore no relation to his declared purpose in obtaining shore leave. In reversing the district court the court of appeals declared that this was not a valid ground for denying relief since there was no effort to limit his movement ashore when the leave was granted.

In 1951 the Supreme Court held a seaman entitled to maintenance and cure for injuries resulting from a fall from a dance hall balcony while he was on shore leave in Naples. Warren v. United States, 340 U.S. 523, 71 S.Ct. 432, 95 L.Ed. 503.

The most recent case on this point appears to be Hunt v. Trawler Brighton Inc., 102 F. Supp. 300, 301, a decision of the United States District Court, District of Massachusetts. Libelant in this case worked on a fishing trawler which customarily tied up at the home port dock for forty-eight hours between trips. The men serving on her were not under articles, their continued service being assumed unless they were discharged or voluntarily quit. Libelant was injured while leaving his house to go to a restaurant. The court, in granting maintenance and cure, declared, "There is no doubt that libelant was, at the time of his injury, a seaman and a member of the crew of the trawler Brighton. * * * The right to maintenance and cure is not determined by what the seaman is doing when he receives his injury. It is only required that he be in the service of the ship in the sense of being generally answerable to the call of duty."

In the case now before the court there is no question that libelant was a member of the crew of the Lurline and generally answerable to the call of duty at the time he was injured. In view of the foregoing authorities, therefore, the court is persuaded that libelant is entitled to maintenance and cure. It is therefore by the court

Ordered that there be entered herein, upon findings of fact and conclusions of law, a decree in favor of libelant and against respondent for maintenance and cure in the sum of $544 and that libelant recover his costs.

In the United States Court of Appeals,
Ninth Circuit—December 8, 1954

No. 13743

Matson Navigation Company,
a corporation,
Appellant,

vs.

Henry C. Lawler,
Appellee.

OPINION

PER CURIAM.

This is an appeal from a decree awarding maintenance to a seaman on account of injury accidentally suffered while on shore leave under circumstances indicating no willful misbehavior on the injured man's part. The seaman was under articles at the time and was answerable generally to the call of duty. The injury occurred in his and the ship's home port, and for that reason the shipowner contends that the decree was erroneous.

The current trend of authority is to the contrary, as the district judge adequately pointed out in his opinion, 108 F. Supp. 946. Since we are in agreement with the trend, no good purpose would be served by adding our comments to the wealth of learning on the subject.

Affirmed.